

## REMARKS

The Office Action of June 29, 2010 has been received and reviewed. Please amend the claims as set forth herein. All amendments are made without prejudice or disclaimer. Reconsideration of the claims as amended is requested

### **The Rejections under 35 U.S.C. § 103(a) are Overcome**

Claims 1-19 and 21-26 stand rejected under 35 U.S.C. 103(a) as assertedly obvious over Krone *et al.* (U.S. 5,391,696) (hereinafter “Krone”) in view of Suzuki *et al.* (U.S. 6,015,789) (hereinafter “Suzuki”), Remington’s Pharmaceutical Sciences 1990 18<sup>th</sup> ed., ch. 89 (hereinafter “RPS”), and Lewis (U.S. 5,391,696) (hereinafter “Lewis”) (collectively hereinafter “the references”). Applicants have amended the claims, and partially in view of those amendments, traverse the rejections as hereinafter set forth.

To establish a *prima facie* case of obviousness, the prior art itself or “the inferences and creative steps that a person of ordinary skill in the art would [have] employ[ed]” at the time of the invention are to have taught or suggested the claim elements. Additionally, the Examiner must determine whether there is “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). “Often, it will be necessary for a [fact finder] to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed ... . To facilitate review, this analysis should be made explicit.” *Id.*

The references cannot render obvious amended independent claims 1, 14, 24, and 26, or independent claims 17, and 19, which include by reference all the elements of claim 1, as neither the references themselves nor the inferences and creative steps that a person of ordinary skill in

the art would have employed at the time of the invention taught or suggested a polytartrate composition “wherein the onset of the second burst is accompanied by dehiscence [(rupturing or breaking open)] of the tablet” as recited by amended claims 1, 14, 24, and 26. Basis for the amendments to claims 1, 14, 24, and 26 can be found throughout the Specification and more specifically in at least ¶¶ [0020], [0057], [0058], and [0067] of the Specification as published.

In addition, applicants submit that the references cannot render obvious claims 2-13, 15-19, 21-23, and 25, *inter alia*, as each of these claims depends from or otherwise incorporate all of the elements of one of non-obvious amended claims 1, 14, 24, and 26.

In view of at least the foregoing, applicants request withdrawal of the rejections of the claims under 35 U.S.C. § 103(a).

#### **The Rejections under 35 U.S.C. § 102(b) are Overcome**

Claims 24 and 25 stand rejected under 35 U.S.C. 102(b) as assertedly being anticipated by Krone. Applicants have amended the claims, and partially in view of those amendments, traverse the rejections as hereinafter set forth.

Unless a single prior art reference describes “all of the limitations claimed” and “all of the limitations [are] arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN Inc. v. VeriSign Inc.*, No. 07-1565, slip op. at 17-18 (Fed. Cir. Oct. 20, 2008). A single prior art reference must “clearly and unequivocally” describe the claimed invention “without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Id.* at 19 (citing *In re Arkley*, 455 F.2d 586, 587 (C.C.P.A. 1972)). Applicants respectfully assert that claims 24 and 25 cannot be anticipated by Krone as Krone does not describe “all of the limitations claimed.”

Specifically, Krone does not describe “wherein the onset of the second burst is accompanied by dehiscence of the tablet” as recited by amended claim 24. Krone cannot anticipate claim 25 as claim 25 depends from, and thus includes all the elements of, independent claim 24.

In view of at least the foregoing, applicants request withdrawal of the rejections of the claims under 35 U.S.C. § 102(b).

**CONCLUSION**

In light of the above amendments and remarks, applicant respectfully requests reconsideration of the application. If questions remain after consideration of the foregoing, or if the Office should determine that there are additional issues which might be resolved by a telephone conference, the Office is kindly requested to contact applicant's attorney at the address or telephone number given herein.

Respectfully submitted,



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